IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3472 OF 2005

Avinash Shrikrishna Dandavate ...Applicant

vs.

Anil Purushottam Sasurkar and others ...Respondents

Mr.N.V.Vechalekar for the Applicant
Mr.U.V.Nikam, A.P.P. for State
Mr.S.R.Kadam for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 4,2006.

P.C.:

1. Heard Advocate for the Applicant in support of this Application. The Applicant is the complainant in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. The complaint ended in the acquittal of the Respondent No.1. The acquittal is mainly on the ground that there was no evidence on record to show that the cheque on the basis on which the complaint was filed was infact duly presented by the Applicant for encashment to his bank. It was held that the memorandum allegedly issued by the bank recording dishonour of the cheque was suspicious.

2. The learned Advocate for the Applicant submitted that the document at Exh.24 shows that the Applicant had tendered the cheque to the bank for encashment. He pointed out that the evidence of P.W.No.2 Shri Madhav Ramana Deshmukh, an employee of the Cosmos Bank clearly proves the signature on the

Memorandum issued by the Paud Road Branch of the Cosmos Bank recording the dishonour of the cheque. He submitted that merely because there is no signature of the Manager on the dishonour Memorandum and merely because the seal of the bank is not affixed on the Memorandum, the Applicant cannot be allowed to suffer in as much as he had deposited the cheque with the Bank and it was dishonoured. He invited my attention to the statement P.W.No.2 that on the date on which the cheque was deposited, there was nil balance in the account of the first Respondent. He, therefore, submitted that the learned Judge has committed a gross error in acquitting the first Respondent.

3. I have considered the submissions. I have perused the original record of the case. The cheque at Exh.23 does not bear rubber stamp or any endorsement of the bank which received the cheque for encashment. Along with the cheque, the Applicant has produced a deposit slip (Exhibit 24) to show that the cheque was deposited on 22nd November 2001. On plain reading of the Exh.24 it is apparent that it is the deposit slip which should have been in the custody of the bank if the cheque was really deposited by the Applicant. Exh.24 is not the counterfoil of the cheque deposit slip which is retained by the depositor of the cheque. The contention of the applicant is that though the document at Exh.24 ought to have been in custody of the bank, the same was returned to the

applicant along with original dishonoured cheque and the Memorandum of dishonour.

4. I have perused the Affidavit of examination-in-chief of the Applicant. In the Affidavit of examination-in-chief, the Applicant has not at all stated that the deposit slip at Exh.24 was returned by the concerned Clerk of the bank to him along with the alleged dishonoured cheque and the memorandum of dishonour.

5. It is, thus, obvious that the Applicant has not explained as to how he came in possession of the deposit slip which normally ought to have been in the custody of the bank. In the cross examination, P.W.No.2-Mr.Deshmukh has admitted that the Exh.24 is the counter foil preserved by the bank. He admitted that Exh.24 does not bear seal of the bank; both on the front and on the back side. He also admitted that the deposit slip is always having a counter foil. He stated that the counter foil bearing the seal of the bank is issued to the depositor. In the present case, the counter foil issued to the depositor is not produced by the Applicant. Perusal of the Exh.25 which is the memorandum of dishonour of the cheque shows that it does not bear the signature of the Manager of the bank. There are two initials appearing at the place where it is required to be signed by the Assistant Manager of the bank. The Memorandum records that the cheque was returned for

the reason No.22 i.e. "account closed".

6. P.W.No.2 Shri Deshmukh the Officer of the Bank stated that the cheque was not honoured as the balance was insufficient and in fact there was a nil balance. However, he has not at all stated that the account of the first respondent was closed. The witness admitted that the seal of the bank is put on a cheque after it is presented. He admitted that the memorandum by which the cheque was returned does not bear the seal of the bank. He admitted that he cannot identify the signature of the Manager of the bank on the said memorandum of dishonour. The document at Exh.24 cannot be a counterfoil issued to the Applicant and therefore it cannot be an evidence to show the deposit of the cheque.

7. The documents at Exhibits 23,24 and 35 create really a serious doubt about the claim of the Applicant that he presented the cheque to his bank. Therefore, the view taken by the learned Trial Judge is certainly a view which could have been possibly taken on the basis of the evidence on record. No case is made out for grant of leave. Application is rejected.

8. It is made clear that the observations made in this order are only for a limited purpose of examining the prayer for grant of leave to prefer an Appeal under section 378 (4) of

the Code of Criminal Procedure, 1973.

JUDGE